



To the Honorable Council
City of Norfolk, Virginia

March 22, 2022

From: Douglas J. Beaver
Director of Utilities

Subject: Conveyance of 101 and 107 North
Shore to HRSD

Reviewed:

Ward/Superward: 1/6

Patrick Roberts, Deputy City
Manager

Approved:

Dr. Larry H. Filer II, City Manager

Item Number: PH-6

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance approving a cost sharing agreement and a transfer agreement with Hampton Roads Sanitation District (HRSD) related to the Wards Corner area Wastewater Pump Station No. 27 located at 101 and 107 North Shore Road.

IV. **Analysis:**

- The City and HRSD desire to regionalize certain wastewater conveyance systems to create savings for their mutual rate payers and benefits to the City and HRSD by the division of roles and responsibilities regarding the ownership and operation of certain assets.
- The City currently owns the subject property and owns and operates a terminal wastewater pump station known as Pump Station No. 27 located on the property.
- The City and HRSD have determined that the transfer of the property and the pump station facilities will serve the needs of the service area most efficiently.
- The City and HRSD have determined that the existing wastewater pump station must be replaced and that a new wastewater pump station must be designed and constructed to serve the area.
- The area will be served by a new wastewater pump station.

V. Financial Impact:

- The City's loss of property value and net book value of the facilities are minor and are offset in part by the elimination of the labor-intensive operating costs of the existing facility.
- The cost sharing agreement reduces the maximum expenditure from \$2,000,000 to \$1,731,000.
- The City has appropriated \$1,731,000 from its approved FY22 Sewer Fund budget for its Capital Improvement Program, "Improve Wastewater Collection System" for this purpose.
- Matching funds are not required.
- The employment impact on the community is neutral.

VI. Environmental: N/A

VII. Community Outreach/Notification:

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action: N/A

IX. Coordination/Outreach:

This letter and ordinance have been coordinated with the City Attorney's Office.

Supporting Material:

- Exhibit A Legal Descriptions (PDF)
- Exhibit B AssetTransferAgreement - WPS-027 (PDF)
- Exhibit C CostSharingAgreement - WPS-027 (PDF)

Form and Correctness Approved:

BAP

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose

By: 

Office of the City Attorney

Contents Approved:

By: 

Utilities

Michael Roggow

Michael Roggow, Director of Finance

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE APPROVING A COST SHARING AGREEMENT AND A TRANSFER AGREEMENT WITH HAMPTON ROADS SANITATION DISTRICT RELATED TO THE WARDS CORNER AREA WASTEWATER PUMP STATION NUMBER 27 LOCATED AT 101 and 107 NORTH SHORE ROAD; AND AUTHORIZING THE EXPENDITURE OF THE SUM OF UP TO \$1,731,000.00 FROM FUNDS PREVIOUSLY APPROPRIATED FOR RELATED ENGINEERING DESIGN AND CONSTRUCTION PHASE SERVICE COSTS.

- - -

WHEREAS, it is the desire of the City of Norfolk ("City") and the Hampton Roads Sanitation District ("HRSD") to regionalize certain wastewater conveyance systems in an effort to create savings for the City's and HRSD's mutual ratepayers and also to create additional benefits to both the City and HRSD by the division of certain roles and responsibilities with regard to operation of systems and the transfer of ownership of certain assets; and

WHEREAS, the City owns certain real property located at 101 and 107 North Shore Road in the City of Norfolk

(hereinafter referred to as the "Property"), as described on Exhibit A attached hereto, on which the City owns, operates and maintains a terminal wastewater pump station and appurtenances known as Wastewater Pump Station Number 27 Facility ("WPS #27"); and

WHEREAS, the City also owns, operates and maintains approximately 4,200 linear feet of 20-inch DI force main which conveys wastewater from WPS #27 to HRSD's regional interceptor system located at the intersection of Newport Avenue and Bradford Avenue (hereinafter, all City wastewater infrastructure will be referred to as "Facilities"); and

WHEREAS, the City and HRSD have determined that WPS #27 must be replaced and that a new pump station should be constructed; and

WHEREAS, the City and HRSD have also determined that their respective individual and mutual interests are best served, including the need for efficient wastewater service, by a transfer of ownership of the Property and Facilities from the City to HRSD, by sharing the costs of the needed replacement of WPS #27, by the design and construction of a new pump station ("HRSD-WPS"), and by having all improvements designed and constructed as one project; and

WHEREAS, City and HRSD desire to enter into a cost-sharing agreement and an asset transfer agreement (hereinafter the "Agreements") whereby they will share the costs of the

needed replacement of WPS #27, particularly certain engineering design and construction service costs of HRSD-WPS, and City shall convey and HRSD shall accept the ownership of the Property and Facilities; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of the Agreements, in substantially the form of the versions that are attached as Exhibits B & C respectively, are hereby approved.

Section 2:- That the City Manager and other proper officers of the City of Norfolk are hereby authorized to execute the Agreements on behalf of the City.

Section 3:- That a sum of up to \$1,731,000.00 from funds which have been previously appropriated is authorized to be expended to enable City to meet its obligations under the Agreements.

Section 4:- That the City Manager and the other proper officers of the City are authorized to execute and deliver to HRSD a Special Warranty Deed in form satisfactory to the City Attorney, and to do all other things necessary and proper to effect the conveyance of the Property to HRSD.

Section 5:- That the City Manager is further authorized to correct, amend or revise the Agreement and the Special Warranty Deed as he may deem necessary, consistent with the intent of the Council as expressed herein.

Section 6:- That this ordinance shall be in effect from and after thirty (30) from the date of its adoption.

Attachments:

Exhibit A - Legal Description (1 page)

Exhibit B - Transfer Agreement (11 pages)

Exhibit C - Cost Sharing Agreement (11 pages)

Account No.: 5200-34-3082-5303 Amount: \$1,731,000.00

EXHIBIT A TO ORDINANCE

101 North Shore Road

ALL THAT certain lot, piece or parcel of land, numbered according to the present system of street numbering as 101 North Shore Road, situate in the City of Norfolk, Virginia, and being known, numbered and designated as Parcel 1, as shown on a plat entitled “Subdivision of Parcel B-B, Resubdivision of Lot 101 (MB 20, PG 21, Norfolk) and Lot 102, Map of Pinehurst (MB 5, PG 15, Norfolk)”, dated October 28, 1979, duly recorded in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia in Map Book 34, Page 44.

107 North Shore Road

ALL THAT certain lot, piece or parcel of land, numbered according to the present system of street numbering as 107 North Shore Road, situate in the City of Norfolk, Virginia, and being known, numbered and designated as Parcel 2, as shown on a plat entitled “Subdivision of Parcel B-B, Resubdivision of Lot 101 (MB 20, PG 21, Norfolk) and Lot 102, Map of Pinehurst (MB 5, PG 15, Norfolk)”, dated October 28, 1979, duly recorded in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia in Map Book 34, Page 44.

February 04, 2022

EXHIBIT B TO ORDINANCE

WPS #27 PROPERTY & FACILITIES TRANSFER AGREEMENT BETWEEN HRSD and THE CITY OF NORFOLK

HAMPTON ROADS SANITATION DISTRICT AND CITY OF NORFOLK TRANSFER AGREEMENT FOR WASTEWATER PUMP STATION No. 27 FACILITY

THIS AGREEMENT ("Agreement"), between the CITY OF NORFOLK ("CITY") and the HAMPTON ROADS SANITATION DISTRICT ("HRSD"), entered this _____ day of _____, 2022, collectively referred to as the "Parties".

WHEREAS, it is the desire for the CITY and HRSD to regionalize certain wastewater conveyance systems in an effort to create savings for the CITY's and HRSD's mutual ratepayers and also to create additional benefits to both the CITY and HRSD by the division of certain roles and responsibilities with regard to operation of systems and the transfer of ownership of certain assets; and

WHEREAS, CITY currently owns certain real property located at 101 North Shore Road, (legal description: GPIN 1439396461, **Parcel 1**, Pinehurst Subdivision) Norfolk, VA;

WHEREAS, the CITY also owns certain other real property located at 107 North Shore Road (legal description: GPIN 1439395461, **Parcel 2**, Pinehurst Subdivision) Norfolk, VA;

WHEREAS, both parcels together are hereafter referred to as the PROPERTY and as shown in **Exhibit A**;

WHEREAS, the CITY owns, operates and maintains a terminal pump station and appurtenances known as Wastewater Pump Station No. 27 Facility ("WPS #27") on Parcel 1, and as shown in **Exhibit B**;

WHEREAS, the CITY owns, operates and maintains approximately 4,200 LF of 20-inch DI force main which conveys wastewater from WPS #27 to HRSD's regional interceptor system located at the intersection of Newport Avenue and Bradford Avenue, and as shown in **Exhibit B**;

WHEREAS, all existing CITY wastewater infrastructure described herein and in Exhibit B are hereafter referred to in this agreement as FACILITIES;

WHEREAS, CITY and HRSD have determined that a transfer of ownership of the PROPERTY and FACILITIES from CITY to HRSD will serve the needs of the service area most efficiently;

WHEREAS, CITY is agreeable to convey, and HRSD is agreeable to acquire, the PROPERTY and FACILITIES;

WHEREAS, this Agreement is contingent upon CITY and HRSD executing a separate Agreement entitled "Cost Share Agreement between the City of Norfolk and

the Hampton Roads Sanitation District for Wastewater Pump Station No. 27 and related infrastructure” which confirms the Parties’ commitment to perform all necessary wastewater improvements to replace the existing WPS #27 and appurtenances.

NOW, THEREFORE, it is mutually agreed between the parties as follows:

I. OWNERSHIP TRANSFER DESCRIPTION

A. CITY agrees to the following:

1. CITY will convey the PROPERTY and FACILITIES described herein and in Exhibits A and B to HRSD in fee simple by Special Warranty Deed in “as is” condition and assign all its rights, title and interest in their entirety in accordance with the terms and conditions of this Agreement.
2. CITY agrees that on the date of conveyance, the title shall be marketable and free and clear of all liens and encumbrances that would have a materially adverse effect. However, the real estate property may be subject to easements and restrictions then of record which do not materially affect the use of the PROPERTY;

B. HRSD agrees to the following:

1. HRSD acknowledges that the CITY has made no representations or warranties whatsoever regarding the PROPERTY, except for Special Warranty of Title;
2. HRSD agrees that it has inspected and is thoroughly familiar with the PROPERTY and is acquiring the PROPERTY and FACILITIES in its “as is” condition;
3. HRSD understands and agrees that the CITY has not made and makes no representations or warranties of any kind with respect to the condition of the PROPERTY and FACILITIES, or its fitness, suitability or acceptability for any particular use or purpose, and the CITY shall not be liable for any latent or patent defects therein;
4. HRSD will offer to convey back to CITY, at no cost to CITY, the PROPERTY and the FACILITIES "as is", if HRSD determines in its sole discretion that any portion of the PROPERTY and FACILITIES conveyed by this Agreement are no longer useful in the performance by HRSD of its functions;

II. ROLES AND RESPONSIBILITIES

A. CITY agrees to the following:

CITY will provide HRSD gross asset and accumulated depreciation values for PROPERTY and FACILITIES.

B. HRSD agrees to the following:

1. HRSD will perform a title examination to ascertain the condition of the title of the PROPERTY being conveyed and obtain owner's title insurance on the property to be effective on the date of conveyance;
2. HRSD will pay all costs of ownership of the FACILITIES, accept operational responsibilities and pay the costs of operation of the FACILITIES at the date of conveyance;
3. HRSD will replace the existing sign on the existing WPS #27 structure with a new sign to indicate ownership by HRSD and an emergency contact telephone number within five business days after the date of conveyance;

C. Both CITY and HRSD agree to the following provisions:

1. It shall be a condition precedent to HRSD's acceptance of the FACILITIES and PROPERTY, that HRSD is able to obtain owner's title insurance on the FACILITIES and PROPERTY through a company authorized to do business in the Commonwealth of Virginia at normal and typical rates.
2. Possession of the PROPERTY and FACILITIES will be given to HRSD at closing.
3. CITY agrees to pay the expenses of preparing the deed. HRSD will pay all other fees and costs charged in connection with the transfer of the PROPERTY and FACILITIES and the recordation of the deed.
4. CITY and HRSD agree that the attorney or title insurance company ("Title Company") selected by HRSD shall act as the settlement agent ("Settlement Agent") at HRSD's expense. The Settlement Agent shall prepare the settlement statement, update, and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications.
5. FEASIBILITY PERIOD: HRSD shall have ninety (90) days from the date this Agreement is executed by all parties in which to complete their assessment

of the PROPERTY and FACILITIES, including title examination and environmental assessment.

6. **CONDITIONS:** HRSD's obligations are expressly conditioned upon receipt of a satisfactory title commitment during Feasibility Period. It being understood that the CITY is under no obligation whatsoever to expend any funds to satisfy this condition. If this condition cannot be met during the Feasibility Period, HRSD may unilaterally terminate this Agreement.
7. **CLOSING:** The Closing will be made at the offices of the Settlement Agent or such other location as the parties may agree, within thirty (30) days after expiration of the Feasibility Period, or as soon thereafter as settlement documents can be prepared and any title issues can be resolved. If, for any reason, HRSD fails to effectuate settlement and Closing on the Property before the expiration of one (1) year from the date this Agreement is fully executed, this Agreement shall immediately terminate unless extended at the sole discretion of the CITY.
8. CITY and HRSD agree to execute all documentation and take all necessary actions to effectuate this Agreement. Upon execution of this Agreement, HRSD and its agents, employees, engineers, and surveyors shall have access to the facility in accordance with Section III of this Agreement.
9. The intention is to transact the conveyance of PROPERTY and FACILITIES, as shown in Exhibits A & B of this Agreement as soon as possible and before construction of any improvements. The exact date of conveyance is to be mutually agreeable to both parties.
10. **BROKERAGE OR AGENT'S FEES:** Neither the CITY nor HRSD are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by the CITY as a result of this transaction. CITY shall have no obligation whatsoever to pay any brokerage or agent's fees or commissions, nor shall the CITY have any obligation whatsoever to see that any such fees or commissions are paid. HRSD and CITY agree to indemnify and hold each other harmless from and against any claim for broker, agent or finder fees or commissions.

III. GENERAL PROVISIONS

- A. **Right of Entry:** HRSD shall have the right to enter onto the WPS #27 facility and Property, and all infrastructure therein for the purpose of making surveys, obtaining data, measurements and design data to ascertain such engineering data as may be necessary for the purposes of design, perform environmental tests, and soil tests provided such testing does not materially interfere with CITY's use of the facility and property and further provided that said tests shall not be so exercised as to cause material damage to said facility and property.

All such testing is to be at the risk and expense of HRSD. In connection with this right to enter upon the facility and property, HRSD agrees (i) to restore the facility and property to its prior condition after the performance of any such survey or other investigation and (ii) to indemnify, defend and hold CITY harmless from and against all costs, losses, damages, and expenses, including reasonable attorneys' fees, arising out of the activities of HRSD and/or its employees, agents and representatives on the facility and property. CITY has the right to be present during any entry upon the facility and property by HRSD.

- B. Notices: All notices required pursuant to the terms of this Agreement shall be deemed effective when delivered by certified mail, return receipt requested, postage prepaid, to CITY and to HRSD at the respective addresses herein shown, unless this Agreement is modified in writing to reflect other addresses:

CITY of Norfolk	HRSD
c/o Director, Department of Utilities	c/o General Manager
401 Monticello Avenue	PO Box 5911
Norfolk, VA 23510	Virginia Beach, VA 23471

With Copies to:

HRSD Counsel:
Janice Anderson
Kellam, Pickrell, Cox & Anderson PC
403 Boush Street, Suite 300
Norfolk, VA 23510

And

Office of the Norfolk CITY Attorney
810 Union Street, Suite 900
Norfolk, VA 23510

- C. Entire Agreement: This Agreement, and any exhibits or attachments made hereto, represent the full agreement and understanding of the parties hereto, there being no additional agreements written, oral or otherwise. This Agreement may be amended only by a writing signed by both parties.
- D. Authority: CITY and HRSD both warrant that they have permission and authority derived under their respective corporate Charters and Enabling Acts to execute and undertake this Agreement and that all necessary actions of the Norfolk CITY Council to allow execution of this Agreement have been completed, and that all necessary Resolutions and actions of the Commission of HRSD to allow execution of this Agreement have been completed. This Agreement shall apply to, and be binding upon both Parties, their elected officials, officers, agents, employees, successors, and assigns.

- E. Compliance with Law: Each party warrants that it has complied with all aspects of applicable federal, state, and local law in entering this Agreement and further warrants that it shall comply with all applicable federal, state, and local laws in the performance of this Agreement.
- F. No Violation: The execution of this Agreement by the parties will not violate any covenant, condition, or contract to which the parties hereto are subject at the time of execution.
- G. Post-Execution Impact on Title: Upon execution of this Agreement, CITY shall not take any action with respect to the facility, property or both that would impact or affect the quality of title that will be conveyed to HRSD in accordance with Section I of this Agreement, with the exception of exercise of the CITY's powers of eminent domain.
- H. Governing Law; Venue: This Agreement shall be deemed to be a Virginia Contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Venue shall be in the courts of the City of Norfolk.
- I. Enforcement: The failure of either party to enforce the terms of this Agreement shall not be considered a waiver as to the enforceability of such terms. If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall remain in full force and effect.
- J. Survival: This Agreement shall survive settlement and conveyance of title and shall terminate only upon the written agreement of both Parties.
- K. Force Majeure: No Party shall be responsible for its failure to fulfill an obligation pursuant to this Agreement to the extent that such failure is due to acts of God; labor strikes; war or terrorism; epidemics/pandemics; the actions of a third party; the actions of another Party; lockouts; or other events not reasonably within the control of the Party claiming force majeure. A Party experiencing a force majeure event that prevents fulfillment of a material obligation hereunder shall (a) give the other Party prompt written notice describing the particulars of the event; (b) suspend performance only to the extent and for the duration that is reasonably required by the force majeure event; (c) use reasonable efforts to overcome or mitigate the effects of such

occurrence; and (d) promptly resume performance of the affected obligation if and when such Party is able to do so.

- L. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument.
- M. Binding Effect: This Agreement shall inure to the benefit of the Parties and shall, to the maximum extent permitted by law, be binding on the Parties and their successors and assigns.
- N. Reservation: Except as expressly provided herein, nothing in this Agreement shall be construed to limit or otherwise affect the authority, rights, or responsibilities of the Parties.

(SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, the CITY of Norfolk has caused this AGREEMENT to be signed by the CITY Manager pursuant to the Resolution adopted by the CITY Council on _____, 2022.

CITY OF NORFOLK

By: _____ Attest: _____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, CITY Manager of the CITY of Norfolk and _____, who is CITY Clerk of the CITY of Norfolk.

Notary Public

Notary#: _____
My Commission expires: _____

APPROVED AS TO CONTENT:

Director, Department of Utilities

APPROVED AS TO FORM AND
CORRECTNESS:

CITY Attorney's Office

IN WITNESS WHEREOF, the Hampton Roads Sanitation District Commission has caused this AGREEMENT to be signed on its behalf by its General Manager in accordance with authorization granted at its regular meeting held on _____, 2022.

HAMPTON ROADS SANITATION DISTRICT

By: _____
Edward G. Henifin, P.E., General Manager

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Edward G. Henifin, P.E., General Manager of Hampton Roads Sanitation District. He is personally known to me or provided _____ as identification.

Notary Public

Notary#: _____

My Commission expires: _____

Exhibit A: PROPERTY

Descriptions:

101 North Shore Road, (legal description: GPIN 1439396461, **Parcel 1**, Pinehurst Subdivision) Norfolk, VA;

107 North Shore Road (legal description: GPIN 1439395461, **Parcel 2**, Pinehurst Subdivision) Norfolk, VA;

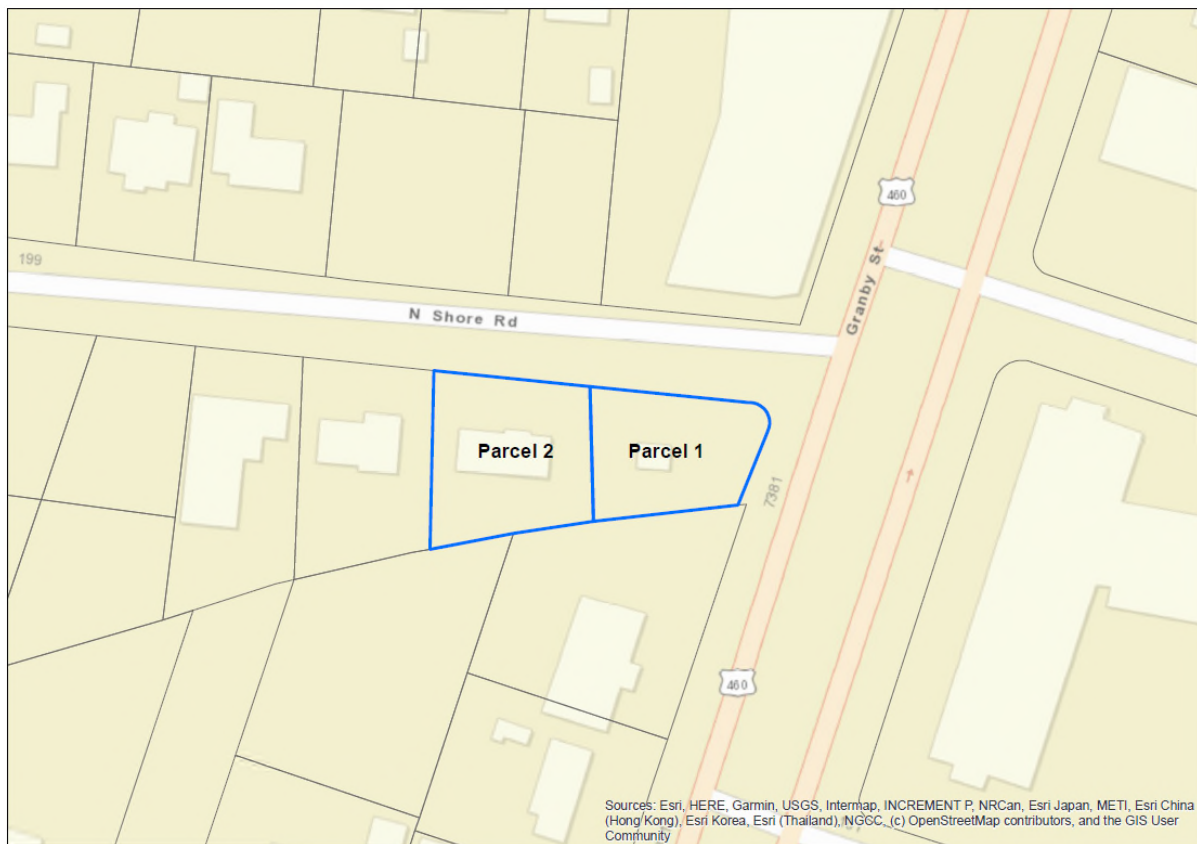


Exhibit B: FACILITIES

Description:

Wastewater Pump Station No. 27 Facility ("WPS #27") on Parcel 1 and 4200 LF of 20-inch DI Force Main.



**COST SHARING AGREEMENT
BETWEEN
THE CITY OF NORFOLK AND
THE HAMPTON ROADS SANITATION DISTRICT
FOR
WASTEWATER PUMP STATION NO. 27 AND RELATED INFRASTRUCTURE**

THIS COST SHARING AGREEMENT ("Agreement"), between the CITY OF NORFOLK ("CITY") and the HAMPTON ROADS SANITATION DISTRICT ("HRSD") is entered into this ____ day of _____, 2022 ("Effective Date").

RECITALS

- R:1. The City of Norfolk currently owns, operates and maintains the existing Wards Corner Area Wastewater Pump Station No. 27 (WPS #27).
- R:2. CITY has an existing contract, dated June 27, 2009, with Michael Baker International (Engineer), to provide engineering services that includes, among other things, designing improvements and preparing construction documents for the then previously planned new City WPS #27 (the "Contract"). In accordance with said Contract, along with its subsequent seven (7) amendments, City is to pay Engineer a total sum not to exceed amount of **\$1,669,552.56** ("**Fees**").
- R:3. City and HRSD (together the "Parties") have recently determined that the existing WPS # 27 needs to be replaced, that a new HRSD Wastewater Pump Station (HRSD-WPS) needs to be designed and constructed to serve the area, which will include the connection of new gravity sewers and force main facilities, identified herein as "**Improvements**" and as illustrated in Exhibits 1 and 2 of this Agreement, and that the existing WPS #27 will be transferred to HRSD (under a separate agreement).
- R:4. Exhibit 1 of this Agreement depicts the proposed new connecting infrastructure (**CITY FACILITIES**) which will be owned by CITY upon project substantial completion per R:3.
- R:5. Exhibit 2 of this Agreement depicts the proposed new connecting infrastructure (**HRSD FACILITIES**) which will be owned by HRSD upon project substantial completion.
- R:6. The Parties have also determined and agreed that their interests are best served by sharing the costs of the needed replacement of WPS #27 and the design and construction of HRSD-WPS and by having the Improvements designed and constructed as one project.
- R:7. CITY has appropriated \$1,731,000 from its approved FY21 budget for its Capital Improvement Program Project - "Improve Wastewater Collection System" ("Appropriation").

- R:8 The City is agreeable to using its existing contract with Engineer, as will be amended and increased to pay Engineer's costs for design and construction phase services for the replacement of WPS # 27 with HRSD-WPS.
- R:9 The City is also agreeable that in the event that the total costs paid by City for the Engineering services, over and above the Fees (which as of the date of this agreement has a remaining balance amount of \$106,795.30), is less than the Appropriation, then City will pay to HRSD any remaining unspent funds from the Appropriation.

NOW THEREFORE,

In consideration of the recitals stated above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following terms:

TERMS

I. DESIGN, PRECONSTRUCTION, AND CONSTRUCTION ADMINISTRATION OF IMPROVEMENTS

A. Administration

1. CITY will provide design administration of the Improvements, in coordination with HRSD, under the CITY's engineering contract with Engineer, as amended, in accordance with the terms and conditions of this Agreement.
2. CITY will provide administration of the Engineer's duties during preconstruction phase of the Improvements and in coordination with HRSD.
3. CITY will amend current engineering contract with Engineer to provide additional services on as needed basis to design Improvements in coordination with and approval of HRSD Project Manager.
4. HRSD will administer all aspects of the preconstruction and construction phases of the Improvements.
5. Engineer will prepare construction documents for the Improvements. Engineer will also provide construction-related administration and inspection services at HRSD's request and in coordination with HRSD's Inspector.

6. Engineer will meet with CITY and HRSD staff on as needed basis to coordinate, review, and solicit approval of all aspects of the design and construction of the Improvements and in accordance to Section I.A.4 of this Agreement.
7. One or more construction contracts may be entered into by HRSD to efficiently complete the Improvements.
8. All design work, specifications, and construction contract documents shall comply with:
 - a. HRSD's *Design and Construction Standards*, latest edition, for HRSD FACILITIES, and
 - b. CITY's Department of Utilities' *Design and Construction Standards*, latest edition, for CITY FACILITIES.

B. Approval of Construction Contract Documents

1. Before any construction work is to begin under this Agreement, HRSD and CITY will jointly review and approve the Construction Contract Documents. This approval shall be in writing.
2. HRSD will review and approve shop drawings and submittals related to HRSD Facilities.
3. CITY will review and approve shop drawings and submittals related to CITY FACILITIES and as part of the Improvements.

C. PAYMENT OF THE DESIGN AND CONSTRUCTION COSTS

1. CITY will pay Engineer for all engineering design costs, construction administration and inspection service costs, and any other additional costs associated with subsequent contract amendments as agreed between the Parties, up to an amount that shall not to exceed its Appropriation (as stated above in R:7).
2. CITY will provide HRSD with Engineer's invoices, along with adequate supporting documentation, and updates as to the balance of the remaining funds available from the Appropriation, as requested by the HRSD Project Manager.
3. In the event that the total Engineer services costs paid by the City from the Appropriation (as evidenced by the paid Engineer invoices), over and above the payment of the Fees (which as of the date of this agreement

has a remaining balance amount of \$106,795.30), is less than the Appropriation, then City agrees to pay to HRSD the remaining unspent balance of funds from said Appropriation.

II. CONSTRUCTION OF IMPROVEMENTS

A. Administration:

1. HRSD shall provide construction inspection and administration of the contractor's contract for construction of the Improvements as well as construction related administration for HRSD and in coordination with HRSD's Inspector.
2. CITY shall have a City inspector on site during CITY FACILITIES construction work. All field changes or concerns noted by the City Inspector during construction shall be reviewed and approved by HRSD.
3. CITY shall provide construction administration services for CITY FACILITIES.

B. Payment of Cost of Improvements

1. HRSD shall be responsible to pay in full the cost of the construction of the Improvements and construction administration services provided for HRSD FACILITIES under its CIP Project identified as "Wards Corner Sanitary Sewer Pumping Station (CIPAB01200)".
2. Upon substantial completion of construction of the Improvements, and upon the City's receipt and payment of the Engineer's final invoice, the CITY will pay to HRSD the unused balance of the Appropriation per Sections I.C.3 of this Agreement in a lump sum payment.

C. City Facilities Ownership Transfer

Upon substantial completion of Improvements, HRSD shall transfer ownership of CITY FACILITIES as depicted in Exhibit 1 of this Agreement and identified in the "As-Built" plans to City, with clear title, free and clear of any liens or encumbrances.

III. GOVERNING LAW

This Agreement shall be deemed to be a Virginia Contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this contract shall be

deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Venue shall be in the courts of the City of Norfolk.

IV. TERMINATION

Anything to the contrary notwithstanding, this Agreement and the obligations of the parties hereunder may be terminated by City or HRSD in the event that the other party breaches or violates any material provision of this Agreement or fails to perform any material covenant or agreement to be performed by either party under the terms of this Agreement and such breach, violation or failure is not cured within sixty (60) days of the defaulting party's receipt of written notice of such breach from the non-defaulting party, or by mutual agreement of City and HRSD.

V. NOTICE

Any notice, communication or request under this Agreement shall be provided in writing by either (a) certified mail, return receipt requested, postage prepaid, or (b) a nationally recognized overnight delivery service (next business day service), or (c) hand-delivery, if the receipt of the same is evidenced by the signature of the addressee or authorized agent, and addressed to the following:

To HRSD

If by U.S. Postal Service:
General Manager
P. O. Box 5911
Virginia Beach, VA 23471-0911

If by Overnight Mail:
General Manager
1434 Air Rail Avenue
Virginia Beach, VA 23455

With Copy to:

Janice P. Anderson
Kellam, Pickrell, Cox & Anderson PC
403 Boush Street, Suite 300
Norfolk, VA 23510

To City of Norfolk

Director
City of Norfolk Department of Utilities
401 Monticello Avenue
Norfolk, VA. 23510

With copy to:

City Attorney
9th Floor – City Hall
810 Union Street
Norfolk, VA 23510

VI. ASSIGNMENT

No party may assign its rights under this Agreement without the prior written consent of the other party.

VIII. AMENDMENT

This Agreement may be amended only by a written instrument duly executed by the parties.

IX. SEVERABILITY

If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be affected and shall continue to be valid, in effect and enforceable to the fullest extent permitted by law.

X. TERM OF AGREEMENT

The term of the Agreement will commence on the date the Agreement is entered into and be completed when each party has completely performed its obligations hereunder.

XI. FORCE MAJEURE

In the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond the control of City or HRSD and without their fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the parties shall be extended for the period of the enforced delay.

XII. WAIVER

No waiver of breach of any term or provision of this Agreement shall be construed to be, or shall constitute, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the parties waiving the breach.

The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

XIII. INTEGRATION

This Agreement constitutes the entire understanding between the parties. No provision of this Agreement may be waived, modified or amended except by an instrument signed by the party against whom the enforcement of such waiver, modification or amendment is sought. No waiver by either party of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to comply.

IN WITNESS WHEREOF, the Hampton Roads Sanitation District (HRSD) Commission has caused this Agreement to be signed on its behalf by its General Manager in accordance with authorization granted at its regular meeting held on _____, 2022.

HAMPTON ROADS SANITATION DISTRICT

By _____
Edward G. Henifin, P.E., General Manager

COMMONWEALTH OF VIRGINIA,
CITY OF VIRGINIA BEACH, to-wit:

The foregoing Agreement was acknowledged before me this ____ day of _____, 2022, by Edward G. Henifin, HRSD General Manager.

Notary Public

My commission expires:

Registration No.:

IN WITNESS WHEREOF, the City of Norfolk has caused this Agreement to be signed by the City Manager on its behalf pursuant to Ordinance Number _____ adopted by the City Council on _____, 2022.

CITY OF NORFOLK

Dr. Larry H. Filer II, City Manager

ATTEST:

City Clerk

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the _____ day of _____, 2022, do hereby certify that Dr. Larry H. Filer II, City Manager and R. Allan Bull, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing deed dated the _____ day of _____, 2022, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2022.

_____[SEAL]
Notary Public

Approved as to Content:

Director of Utilities

Approved as to Form and Correctness:

Deputy City Attorney

CERTIFICATE OF FUNDING

I hereby certify that the money required for this Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

ACCOUNT:_____

AMOUNT:_____

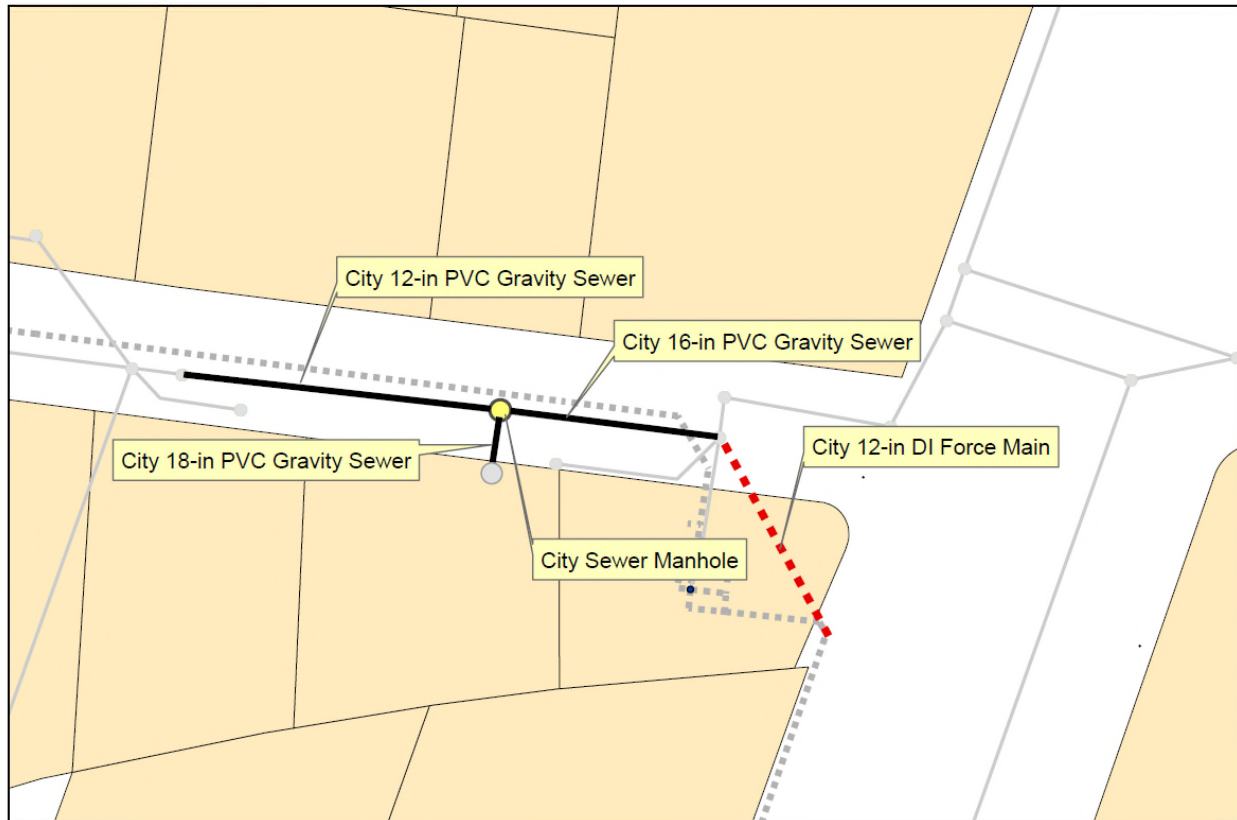
VENDOR CODE:_____

CONTRACT NO.:_____

Director of Finance

Date

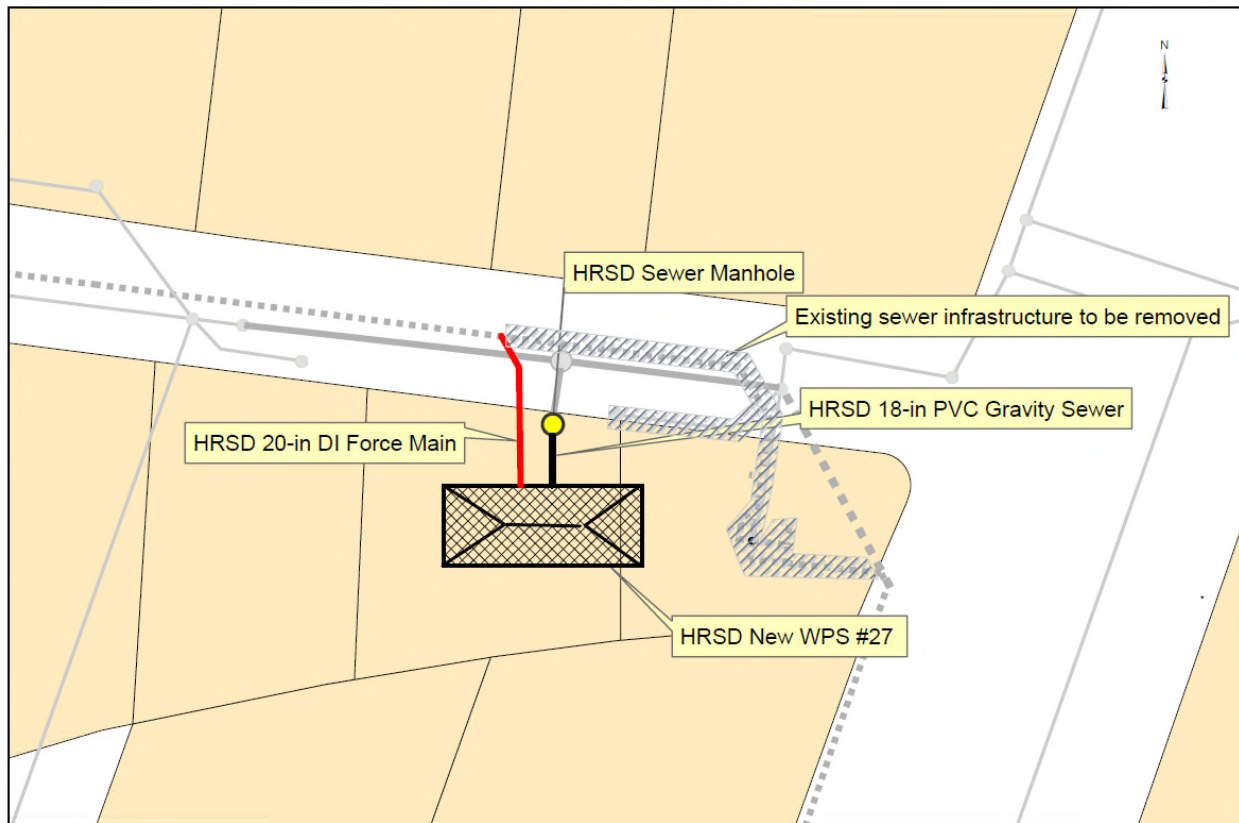
Exhibit 1: Improvements – City Facilities



NOTE:

Actual City Facilities will be noted on the approved “As-Built” plans of the Improvements (ref. CIP AB01200 - Wards Corner Sanitary Sewer Pumping Station)

Exhibit 2: Improvements - HRSD Facilities



NOTE:

Actual HRSD Facilities will be noted on the approved “As-Built” plans of the Improvements (ref. CIP AB01200 - Wards Corner Sanitary Sewer Pumping Station)